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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,613	10/28/2003	Lillian R. Paolino	P/113-14	6303
7590	03/05/2007		EXAMINER	
Philip M. Weiss Weiss & Weiss 300 Old Country Road Suite 251 Mineola, NY 11501			DANG, HUNG XUAN	
			ART UNIT	PAPER NUMBER
			2873	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	03/05/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/695,613	PAOLINO, LILLIAN R.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Hung X. Dang	2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. §.133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 05 December 2006.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 and 16-22 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 13-15 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

1. The amendment filed on 12/5/06 has been entered.

### **Claims Rejection Under 35 USC – 103**

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Thayer et al** (6,131,209) in view of **Beames** (D 466,543).

Thayer et al discloses eyewear comprises solid frames 60 having a lens; said frame 60 consisting of a one piece solid molded frame; said frames having a nose bridge which fits on top of a user's nose; said frames secured around a user's head by a single band 52; said band 52 secured to said frames 60 by two securing pieces wherein said band 52 is removed from said frame by either or both of said securing pieces wherein Velcro is used for both securing pieces; wherein said band 52 can be totally removed from said frames and replaced with other similar bands. (see at least figure 5 and the related disclosure.)

Thayer et al teach a single lens in the frame, Thayer et al does not teach that a pair of lenses as that claimed by Applicant.

Eyeglasses have long been designed with the general objective of correction the vision of the eye of the wears. Numerous designs of dual lens glasses and single lens glasses have been developed, differing only in aesthetic feature.

Beames, however, discloses the frames having a pair of lenses.

Because Thayer et al and Beames are both from the same field of endeavor, the purpose of aesthetic feature as disclosed by Beames would have been recognized as an art pertinent art of Thayer et al.

It would have been obvious, therefore, at the time the invention was made to a person having skill in the art to construct the eyeglasses frame, such as the one disclosed by Thayer et al, with a pair of lenses, such as disclosed by Beames for the purpose of the purpose of aesthetic feature.

#### **Response to Applicant's argument**

3.     Applicant's arguments filed 12/5/06 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

4. Any inquiry concerning this communication should be directed to Examiner Dang at telephone number (571) 272-2326.

2/07



HUNG DANG

PRIMARY EXAMINER

TC 2800